



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jon Cicirelli  
Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** November 23, 2020

Approved

Date

12/4/20

**COUNCIL DISTRICT: 7**

**SUBJECT: NEGOTIATION AND EXECUTION OF A DONATION AGREEMENT WITH RANDALL D. REEDY, SUCCESSOR TRUSTEE OF THE LOUISE SCAGLIONE ELIA CREDIT SHELTER TRUST DATED MARCH 1, 2008 UNDER THE 2006 ELIA FAMILY REVOCABLE LIVING TRUST AND THE ROCCO ELIA SURVIVOR'S TRUST UNDER THE 2006 ELIA FAMILY REVOCABLE LIVING TRUST FOR PARCELS LOCATED AT 100 W. ALMA AVENUE AND 1413 SANBORN AVENUE**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager, or their designee, to negotiate and execute:

- (a) A Donation of Real Property Agreement between Randall D. Reedy, Successor Trustee of the Louise Scaglione Elia Credit Shelter Trust Dated March 1, 2008 under the 2006 Elia Family Revocable Living Trust and the Rocco Elia Survivor's Trust under the 2006 Elia Family Revocable Living Trust and the City of San José for two (2) parcels of real property located at 100 W. Alma Avenue and 1413 Sanborn Avenue in the City of San José, further identified as Assessor's Parcel Numbers 434-23-133 and 434-23-134, respectively;
- (b) Lease agreements with tenants at 110 W. Alma Avenue, 102 W. Alma Avenue, 104 W. Alma Avenue, and 1413 Sanborn Avenue; and
- (c) All other necessary documents to complete the transfer of the two parcels.

## OUTCOME

Approval of the recommendation in this memorandum would allow the City Manager, or their designee, to negotiate and execute a Donation Agreement with Randall D. Reedy, the attorney for, and Successor Trustee of, the Louise Scaglione Elia Credit Shelter Trust Dated March 1, 2008 under the 2006 Elia Family Revocable Living Trust and the Rocco Elia Survivor's Trust under the 2006 Elia Family Revocable Living Trust ("Successor Trustee"), for the City's

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acceptance of 100 W. Alma Avenue (APN 434-23-133) and 1413 Sanborn Avenue (APN 434-23-134) ("Subject Properties"). Approval of the recommendation will also authorize the City's assumption of the property's current lease agreements and subsequent negotiation and execution of new lease agreements to provide for occupancy until the project construction commences.

These parcels will be donated to the City at no cost provided the City agrees to develop the properties as a children's park. The City will be responsible for associated closing costs, which will not exceed \$10,000. The donation to the City must be completed by December 26, 2020.

## **BACKGROUND**

The Subject Properties are located at W. Alma Avenue and Sanborn Avenue, and are directly adjacent to the City's Alma Community Center located at 136 W. Alma Ave, San José, CA 95110. There is ±4,254 square feet of retail space and a 1,464 square foot residence. The parcels comprise approximately 14,560 square feet (0.32 acres) of land.

The real property located at 1413 Sanborn Avenue, San Jose, CA (APN 434-23-134) is held in the Rocco Elia Survivor's Trust under the 2006 Elia Family Revocable Living Trust ("Sanborn Property") and the real property located at 100 W. Alma Avenue, San Jose, CA (APN 434-23-133) is held in the Louise Scaglione Elia Credit Shelter Trust Dated March 1, 2008 under the 2006 Elia Family Revocable Living Trust ("Alma Property").

In the Second Amendment and Restatement of Rocco's Survivor's Trust dated January 9, 2015, it provides that the Sanborn Property is to be used for the construction of a children's park within ten (10) years after the death of the trustor. The Alma Property is governed by the Louise Scaglione Elia Credit Shelter Trust which provides that the Alma Property is to be used for the construction of a children's park within five (5) years of the date of the death of the surviving spouse. The time frame was changed to 10 years for the Sanborn property due to the fact that Mr. Rocco Elia gave his caregiver a right-of-occupancy to live in the Sanborn property for 5 years after his death. Mr. Rocco Elia passed on December 26, 2015. The original 5-year timeframe is December 26, 2020 and the extended 10-year timeframe is December 26, 2025.

In February 2018, Mr. Elia's Successor Trustee approached Parks, Recreation and Neighborhood Services (the Department) staff to discuss the opportunity of accepting the donation of the Subject Properties. The Successor Trustee advised Department staff of Mr. Rocco Elia's wish of the Subject Properties being developed into a children's park per the trust documents, and that the transfer needs to be finalized by December 26, 2020.

After reviewing the site conditions and evaluating the long-term benefits to the City's park system, Department staff recommended that the City pursue acceptance of the donated parcels.

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Following this direction, Real Estate staff have been conducting due diligence to complete acquisition of the Subject Properties.

### **ANALYSIS**

The Successor Trustee understands that the City is making progress and is committed to delivering the park consistent with Rocco Elia and Louise Scaglione Elia's intention that a children's park be created on the Subject Properties. The Successor Trustee wishes to finalize the donation by December 26, 2020 so the City can continue its planning and construction of the park project.

The properties will be donated to the City at no cost and the City will pay for associated closing costs, which are not to exceed \$10,000. There are currently three business tenants and one residential tenant occupying the Subject Properties. The tenants, their current rents, and lease terms are as follows:

<b>Unit Address</b>	<b>Business Name</b>	<b>Monthly Rent</b>	<b>Lease Term</b>
100 W. Alma Avenue	Mexican Brothers Market	\$5,100	Month-to-Month
102 W. Alma Avenue	Allstate Insurance	\$2,600	Month-to-Month
104 W. Alma Avenue	AlmaSol Beauty Salon	\$2,000	Expires 12/31/2020 and converts to Month-to-Month
1413 Sanborn Avenue	Residential Tenant	N/A	12/26/2020

Staff recommends that the City assume the current lease agreements with the tenants as part of the donation. The current monthly rent for the three tenants is approximately \$9,700 per month, totaling approximately \$116,400 per year in revenue. The trust documents included a five-year right-of-occupancy at no cost for the residential tenant at 1413 Sanborn Avenue. This right expires December 26, 2020. The City will honor this no-cost arrangement until December 26, 2020, at which point the City will begin to lease the property to the current tenant at a monthly rate of \$2,000, generating an additional \$24,000 per year in revenue. Tenants are responsible for all utilities on the leased premises and are required to keep the area surrounding the premises free of all waste, litter, and debris. Occupancy of the structures ensures monitoring and care of the properties and the City has no immediate need to occupy the site. Revenues from the leases will be posted to the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 7 and used to support the capital needs of this district.

Staff also recommend that the City negotiate and enter into new lease agreements after the donation is finalized with the tenants for terms of two-years each at the current (or higher) rent rates specified in the table above. The residence at 1413 Sanborn will be leased for a period of

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two years at a monthly rate of \$2,000, beginning no earlier than January 2021. It is to the City's benefit that the units are occupied while City staff are in the park planning process. The proposed leases will automatically convert to month-to-month terms at the expiration of the initial terms. Tenants will be provided a six-month notice to vacate the premises prior to the start of construction. Staff consulted with a relocation consultant regarding the leases and proposed lease terms described above and determined that the tenants are not eligible for relocation benefits. There are no relocation costs anticipated in relation to this donation.

Staff are initiating the park Master Planning process in anticipation of the transfer of the Subject Properties. Once complete, the design and development of construction documents will occur, followed by the bidding process and awarding the project before demolition and construction is set to occur. The time required to develop a plan, construction documents, and award a construction contract is estimated to take 31 months. Site preparation and construction of the park are estimated to take an additional 12 months after award of contract.

As part of the due diligence effort, the Environmental Services Department (ESD) performed a Phase I Environmental Site Assessment, dated May 2019 for the Subject Properties. ESD did not identify any recognized environmental conditions of known or likely hazardous conditions on the Subject Properties. The sites are not listed on any regulatory databases of known or suspected contaminated sites and no evidence of contamination was noted during the site inspection and interviews. Prior to developing the park, ESD recommends testing the soil for lead once the structures are removed, as the structures could have flaked off lead-based paint. The area of potentially impacted soil is expected to be relatively small. ESD estimates that the cost to off-haul the soil would likely be about \$50,000, but no greater than \$100,000.

## **CONCLUSION**

Staff recommend that City accept the donation of the Subject Properties for development of a children's park and negotiate and execute new lease agreements with existing tenants to keep the Subject Properties occupied and generate revenue for the City prior to the construction of the park.

City staff and design consultant will prepare a Master Plan and associated California Environmental Quality Act ("CEQA") documentation to create a unifying vision for the 0.32 acre neighborhood park located at the corner of W. Alma and Sanborn Avenues and explore the possibility of future phasing in conjunction with adjacent Alma Community Center. The design team will complete a site analysis, engage the community in identifying and prioritizing recreation needs, create an interpretive/commemorative feature to acknowledge the property donor, create a final Master Plan, Master Plan Report, and estimate of probable construction costs.

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## **EVALUATION AND FOLLOW-UP**

As proposed, the Subject Properties will provide approximately 0.32 acres of parkland adjacent to the Alma Community Center. Staff will negotiate and execute a Donation Agreement with the Successor Trustee. Staff will also negotiate and execute new lease agreements with existing or new tenants. A funding recommendation for master planning and environmental clearance documents will be submitted to Council for approval as part of the regular Capital Improvement Program budget. Staff will return to Council for final approval of the Master Plan and California Environmental Quality Act (CEQA) approval at a future date along with information on anticipated costs for construction, operations, and maintenance of the proposed park.

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the December 15, 2020 Council Meeting.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, Department of Planning, Building and Code Enforcement, Environmental Services Department, and the City Manager's Budget Office.

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

## **FISCAL/POLICY ALIGNMENT**

Acquisition of the proposed site aligns with public park and recreation goals of the *Envision San José 2040 General Plan*.

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**COST SUMMARY/IMPLICATIONS**

A total amount not-to-exceed \$10,000 is needed for the land acquisition and associated escrow and closing costs for 100 W. Alma Avenue and 1413 Sanborn Avenue.

**1. LAND ACQUISITION COST:**

Amount of City's offer to be deposited into escrow	\$0
Amount of escrow closing, and ancillary costs related to close (estimated)	\$10,000

<b>Total</b>	<b>\$10,000</b>
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**2. SOURCE OF FUNDING:** Construction Tax and Property Conveyance Tax Fund: Central Fund (390).

**3. FISCAL IMPACT:** Lease revenue from the properties are estimated to total approximately \$140,400 annually, with approximately \$70,000 anticipated for the current fiscal year. These revenues will be received in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 7 to support the capital needs of this district until the properties are developed into a children's park. Increases to the revenue estimate for 2020-2021 for this fund will be brought forward as part of a future budget process and the revenue estimate for subsequent fiscal years will be incorporated into the 2021-2022 Proposed Capital Budget and 2022-2026 Proposed Capital Improvement Program.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the costs recommended as part of this memo.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2020-2021 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
390	4191	Property Services	\$100,000	\$10,000	V - 395	06/23/2020, 30437

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**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JON CICIRELLI

Director of Parks, Recreation and  
Neighborhood Services

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Yves Zsutty, Division Manager, at [yves.zsutty@sanjoseca.gov](mailto:yves.zsutty@sanjoseca.gov) or Kevin Ice, Senior Manager, Real Estate Services at (408) 535-8197.